IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

WP(C).No. 21680 of 2004(E)

PETITIONER:

K.P.PAULY, KACHAPPILLY HOUSE,
TANA, IRINJALAKUDA.

BY ADV. GRI.K.G.BALASUBRAMANIAN

RESPONDENTS:

STATE OF KERAL REPRESENTED BY THE
PRINCIPAL SECRETARY, GENERAL ADMINISTRATION,
FFP-P DEPT., THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.K.V.MANOJ

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.21680/2004

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE APPLICATION DT. 25.11.94 SUBMITTED BY PETITIONER BEOFRE CHIEF MINISTER & RESPONDENT.

EXT.P2:- COPY OF THE ORDER DT. 20.5.01 SANCTIONING PENSION.

EXT.P3:- COPY OF THE REPRESENTATION SUBMITTED BY PETITIONER BEFORE THE CHIEF MINISTER OF KERALA DT.2.11.01.

EXT.P4:- COPY OF THE LETTER DT. 22.12.01 FROM RESPONDENT TO PETITIONER.

EXT.P5:- COPY OF THE LETTER DT. 6.4.04 FROM RESPONDENT TO PETITIONER.

EXT.P6:- COPY OF THE TEXT OF RULE 18 OF FREEDOM FIGHTERS' PENSION RULES, 1971.

/TRUE COPY/

P.S. TO JUDGE

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T.R. Ramachandran Nair, J.

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W.P.(C).NO.21680 of 2004-E

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Dated this the 24th day of July, 2007

JUDGMENT

The petitioner is a freedom fighter. As per Ext.P1 application, he applied for pension under the relevant scheme. Ext.P1 is dated 25.11.1994. Ultimately, only by the order dated 20.5.2001 (Ext.P2) he was sanctioned the pension. As per Ext.P2, the sanction is only from the date of the order.

2. Aggrieved by the denial of pension from the date of application, he submitted a further representation to the Chief Minister of Kerala, produced as Ext.P3 in the writ petition. That was rejected by Ext.P4 stating that going by the existing rules, pension sanctioned is payable only from the date of issuance of sanction order.

3. Rule 18 of the Kerala Freedom Fighters' Pension Rules provides that pension sanctioned under these rules will be payable from the date of issue of the sanction order. The grievance raised by the petitioner is that the long delay in sanctioning pension should not affect his right to claim it from the date of application. Learned counsel for the petitioner pointed out that when an application is received, the concerned revenue authorities have to submit their report expeditiously and law requires that these papers are to be

proceeded within a reasonable time. Therefore, the delay, if any, caused by the administrative machinery should not be at the cost of the petitioner.

4. The identical question has been considered by the Apex Court in the decision reported in **State of M.P. and another v. Devkinandan Maheshwar**i (2003) 3 SCC 183. Rule 3(6) of the M.P. Swatantrata Sangram Sainik Samman Nidhi Niyam, 1972 was the rule that was considered in the said decision. It was held that pension under the said rules can be claimed only from the date of sanction of the pension and not from the date of application. In fact, in **Mukund Lal Bhandari v. Union of India** (1993 Suppl. (3) SCC 2) the Apex Court had taken the view that pension would be payable with effect from the date of application in the absence of any such rule providing as to from which particular date the pension would be payable. After considering the said decision also the Apex Court in 2003 (3) SCC 183 held that it can be claimed only from the date of sanction of the pension, obviously because of the provisions of Rule 3(6) under which a freedom fighter will be entitled to claim the benefit of M.P. Rules, 1972 from the date of passing the order. Learned counsel for the petitioner brought to my notice a decision of a Division Bench of this court reported in **Union of India v. Radhamony** (2005 (4) KLT 27). There, the

entitlement of the applicant under the Swatantrata Sainik Samman Pension Scheme, 1980 from the date of application was considered. It was held that pension should be given to the applicant from the date on which the original application is received, irrespective of whether the application is filed with or without requisite evidence. Their Lordships had followed the dictum laid down in 1993 Suppl. (3) SCC 2.

5. Learned Govt. Pleader brought to my notice a decision of a Division Bench of this court in Writ Appeal No.1818/2006 wherein the very same question was considered and the validity of Rule 18 has been upheld. In 2005 (4) KLT 27 the provision considered therein did not provide for a particular clause like clause 18 that is relevant in this case. Therefore, the reasoning adopted therein may not be applicable to the facts of this case.

Therefore, following the decision of the Supreme Court in (2003) 3 SCC 183 and that of the Division Bench of this court in Writ Appeal No.1818/2006 there is nothing to interfere with the order Ext.P4 impugned herein. The writ petition is dismissed.

(T.R. Ramachandran Nair, Judge.)

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